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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

PHILIP RANNIS,	)	Case No.: EDCV-06-373 AG(JCx)
on behalf of himself and all ,)	
others similarly situated,	)	DEFENDANT'S OBJECTION
	)	TO THE FORM AND CONTENT
	)	OF PLAINTIFF'S ORDER AND/OR
Plaintiff,	)	JUDGMENT GRANTING
	)	FINAL APPROVAL
vs.	)	OF CLASS SETTLEMENT, WHICH
	)	WAS FILED WITH THE COURT
	)	ON OCTOBER 27, 2008,
FAIR CREDIT LAWYERS, INC.,	)	DOCKET NO. 193
PETER L. RECCHIA, and)	
DOES 1 to 10,	)	NO HEARING DATE
	)	CURRENTLY SET
)	
	)	Place: Courtroom 10D (Santa Ana)
Defendant(s).	)	Judicial Officer: Andrew J. Guilford
)	

At the time of the Final fairness hearing in this action, held on October 27, 2008, plaintiff was Ordered to submit a proposed judgment to the Court. Defendant is hereby

1 filing his objection to the document with the 15 days as ordered by the court. During the
2 October 27th hearing, Defendant's counsel advised the Court of certain issues defendant
3 desired to be included in the final judgment document. On October 27, 2008, plaintiff
4 filed a document with the Court titled Final Order Granting Approval of Class
5 Settlement. Defendant requests the following changes/modifications to be included in
6 the final judgment.
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9 Defendant, Peter L. Recchia, hereby OBJECTS to the form and content of
10 plaintiff's Order Granting Final Approval of Class Settlement, which was filed with the
11 Court on October 27, 2008, Docket No. 193. The grounds for this OBJECTION are
12 that:
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15 1. Each class member in whose favor the judgment is rendered or who are
16 bound thereby must be identified in the Final Order pursuant to FRCP 23(c)(2).
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18 2. Defendant is not required to deposit \$600 with the Class Administrator for
19 each class member pursuant to the settlement agreement, requiring correction to
20 paragraph 4 of plaintiff's Final Order.
21

22 3. The Final Order should reflect that final judgment will not be entered until
23 the Court rules on plaintiff's motion for attorney's fees and costs, since both liability
24 issues and attorney's fees and cost issues are both subject to appeal, and each will be
25 addressed in defendant's Notice of Appeal.
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1 4. The Final Order should reflect the particular liability issue, which
 2 defendant has a right to appeal, which is the Court's granting partial summary judgment
 3 in favor of plaintiff.
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5 5. The Final Order should reflect execution on judgment is ordered stayed
 6 pending final outcome of defendant's appeal, as described in the Notice to Class
 7 members.
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9 This Objection is based upon the following Points and Authorities, which
 10 specifically describe the changes that should be made to the Final Order Granting
 11 Approval of Class Settlement. In the Conclusion of this Objection, Defendant describes
 12 the specific changes that should be made to plaintiff's Final Order Granting Approval of
 13 Class Settlement, and where and how they should be included in the Final Order
 14 document.
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18 MEMORANDUM OF POINTS AND AUTHORITIES

19 1. EACH CLASS MEMBER IN WHOSE FAVOR THE JUDGMENT IS
 20 RENDERED OR WHO ARE BOUND THEREBY MUST BE IDENTIFIED IN THE
 21 FINAL ORDER PURSUANT TO FRCP 23(c)(2), REQUIRING MODIFICATION OF
 22 PARAGRAPH 2 OF THE FINAL ORDER
 23
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25 FRCP 23(c)(2) requires that judgments in class actions brought under 23(b)(3)
 26 must "include and specify or describe" those to whom 23(c)(2) notice was directed, and
 27 who did not opt out of the class, and whom the court finds to be members of the class.
 28

1 The Final Order prepared by plaintiff does not “include and specify or describe” those
2 who did not opt out of the class, and whom the court finds to be members of the class.
3
4 Paragraph 2. of plaintiff’s Final Order must be modified to list each member of the
5 class, by specifically describing [listing] those class members in the Final Order.
6

7 2. DEFENDANT IS NOT REQUIRED TO DEPOSIT \$600 WITH THE
8 CLASS ADMINISTRATOR FOR EACH CLASS MEMBER PURSUANT TO THE
9 SETTLEMENT AGREEMENT, REQUIRING CORRECTION TO PARAGRAPH 4
10 OF PLAINTIFF’S FINAL ORDER
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12 Paragraph 4. of plaintiff’s Final Order begins by stating: “Defendant Peter L.
13 Recchia shall pay \$600 as damages to each of the 20 members of the class, *which sum*
14 *shall be deposited with the Class Administrator.*” This portion was added by plaintiff
15 to the Final Order, but is not part of the settlement agreement.
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18 A copy of the transcript of the settlement agreement is attached to the Final Order
19 proposed by plaintiff, which was filed with the Court on October 27, 2008, Docket No.
20 193. The settlement agreement states: “Defendant Peter L. Recchia agrees to pay the
21 sum of \$600 per class member.” There is no provision that Recchia “Deposit that sum
22 with the Class Administrator.” As such, paragraph 4. of the Final Order must be
23 modified to reflect the actual language in the settlement, and not the inaccurate language
24 in plaintiff’s Final Order.
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1 3. FINAL JUDGMENT SHOULD NOT BE ENTERED UNTIL THE
2 COURT RULES ON PLAINTIFF'S MOTION FOR ATTORNEY'S FEES AND
3 COSTS, SINCE BOTH LIABILITY ISSUES AND ATTORNEY'S FEES AND
4 COSTS ARE BOTH SUBJECT APPEAL, AND EACH WILL BE ADDRESSED IN
5 DEFENDANT'S NOTICE OF APPEAL
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8 Paragraph 10, on page 8, of the settlement agreement transcript, provides:
9
10 “defendant Peter L. Recchia reserves the right to appeal liability, attorney's fees and
11 cost issues.” This settlement term specifies the parties have agreed to and anticipate an
12 appeal as to each of these issues, both [1] liability and [2] attorney's fees and costs. As
13 such, a Final Order should not be issued until after the Court's ruling on plaintiff's
14 motion for attorney's fees and costs to preclude the need for the filing of multiple
15 appeals.
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18 “Generally, a party is entitled to a single appeal, to be deferred until final
19 judgment has been entered, in which claims of District Court error at any stage of the
20 litigation may be ventilated.” Digital Equip. Corp. vs. Desktop Direct, Inc. 511 US 863,
21 868; 114 S.Ct. 1992, 1996 (1994). The purpose of the “final judgment rule” is to
22 promote efficient judicial administration and it avoids the harassment and cost of a
23 succession of separate appeals from various rulings made during the course of the
24 litigation. Firestone Tire and Rubber Co. vs. Risjord, 449 US 368, 374, 101 S.Ct. 669,
25 673 (1981); American States Ins. Co. vs. Dastar Corp. 318 F3d 881, 884, (9th Cir. 2003).
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1 Final judgment rule promotes judicial efficiency, avoids multiplicity of litigation, and
2 minimizes delay by forbidding piecemeal disposition of what for practical purposes is a
3 single controversy.
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5 Normally, attorneys fees and costs are collateral to the merits of the action and
6 need not be resolved for the judgment in the action to be final. However, the parties in
7 this case have agreed that BOTH [1] liability and [2] attorney's fees and costs issues
8 may be appealed, so each of these issues should be included in one Final Order so they
9 may be part of one appeal. Additionally, if defendant prevails on appeal as to liability
10 issues, the issue of attorney's fees and costs would be moot. Both matters would be
11 resolved in one appeal, without the necessity, expense and multiplicity of a second
12 pending appeal.
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17 For the reasons stated above regarding the "final judgment rule," the following
18 paragraph should be added to the Final Order:
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20 Paragraph 8 of the Final Order should be modified to include: The Order
21 Granting Final Approval of Class Settlement and the judgment issued shall not be
22 entered until after the Court's ruling of plaintiff's motion for attorney's fees and costs.
23 The amount of attorney's fees and costs ordered [if any] shall be included in the Order
24 Granting Final Approval of Class Settlement.
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1 4. THE FINAL ORDER SHOULD REFLECT DEFENDANT HAS A
2 RIGHT TO APPEAL THE COURT'S GRANTING PARTIAL SUMMARY
3 JUDGMENT
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5 The party's have agreed defendant may appeal liability issues. The liability issue
6 defendant will appeal is the Court's granting of partial summary judgment in plaintiff's
7 favor, which held that defendant violated the 15 USC 1679 et. seq., the Credit Repair
8 Organizations Act (CROA), and California's Unfair Business Practices Law, Business
9 and Professions Code Section 17200.
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12 Orders granting partial summary judgment are not final appealable orders because
13 they do not dispose all claims. See American States. Co. vs. Dastar Corp., supra, 318
14 F3d at 884. To ensure defendant's Notice of Appeal is accepted by the 9th Circuit,
15 regarding liability found against him as part of the Court's granting partial summary
16 judgment in plaintiff's favor, the Final Order must clarify that issue. As such, a
17 paragraph 9. should be added to the Final Order to include: The liability issue that
18 defendant may appeal is the District Court's ruling granting partial summary judgment
19 in favor of plaintiff, which held that defendant violated 15 USC 1679 et. seq., the Credit
20 Repair Organizations Act (CROA), and California's Unfair Business Practices Law,
21 Business and Professions Code Section 17200.
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1 5. THE FINAL ORDER SHOULD REELECT EXECUTION OF
2 JUDGMENT IS STAYED PENDING FINAL OUTCOME OF DEFENDANT’S
3 APPEAL, AS DESCRIBED IN THE NOTICE TO CLASS MEMBERS
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5 The Notice sent to Class Members advised the members on page 2 of the Notice,
6 [You] “will be paid \$600 as your share of the class settlement if this matter is
7 successfully resolved in favor of plaintiff Philip Rannis and the Class. Defendant has
8 reserved his right to appeal the decision against him in this lawsuit for violation of
9 various statutes.” On page 3 of the notice, the Class members were advised: “If and
10 when plaintiff Philip Rannis and the Class obtain a favorable conclusion of this lawsuit,
11 the Class administrator will pay \$600 to each class member.” “Defendant has, however,
12 reserved the right to appeal the decision against him in the lawsuit. If defendant does
13 appeal and is successful on appeal, you will receive nothing.” “If defendant appeals, it
14 may take years to resolve this litigation.”
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19 The parties have agreed defendant may appeal liability issues. The Class Notice,
20 approved by the Court, provides Class Members clear notice they will receive nothing
21 unless the matter is successfully concluded in plaintiff’s and the class members’ favor.
22 The Class members were also advised, if defendant is successful with his appeal, the
23 Class Members will receive nothing. *The class members have thus been clearly advised*
24 *they may receive nothing for years, and if defendant’s appeal is successful, they will*
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1 *receive nothing at all.* This notice is more than adequate to justify a stay on execution
2 of the final judgment, once it is entered.
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4 Prior to the filing of a Notice of Appeal, the District Court has the jurisdiction to
5 modify or supersede the order being appealed to maintain the status quo of the parties. It
6 is the Defendants intention to file a request for “Stay Pending Appeal” if this court doen
7 not include a “Stay” in the final judgment. See Rutters Practice Guide, 9th Circuit
8 Federal Appellate Practice, Revision #1 2008, page 6-51, Sec. 6:300. To this end, and
9 consistent with the intent of the party’s settlement agreement and the Notice provided to
10 Class members, following Final Approval of Class settlement and entry of judgment
11 associated with the Final Order, the Final Order should include a paragraph 10. to read
12 as follows: Pending the outcome of defendant’s appeal as to liability issues and any
13 award that may be entered regarding attorney’s fees and costs, the parties shall maintain
14 their status quo. Plaintiff shall not execute on the judgment for damages or on any order
15 that might be issued by the Court against defendant for payment of attorney’s fees and
16 costs.
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24 CONCLUSION

25 In summary, the following changes and additions should be made to the Order
26 Granting Approval of Class Settlement:
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1 Paragraph 2. of plaintiff's Final Order **must be modified to list each member of**
2 **the class, by specifically describing [listing] those class members in the Final**
3 **Order.**

4
5 Paragraph 4. of the Final Order **must be modified to reflect the actual language**
6 **in the settlement, and remove the phrase, *which sum shall be deposited with the Class***
7 ***Administrator.***"

8
9 Paragraph 8. of the Final Order should be modified to include:

10
11 **The liability issue that defendant may appeal is the District Court's ruling**
12 **granting partial summary judgment in favor of plaintiff, which held that**
13 **defendant violated 15 USC 1679 et. seq., the Credit Repair Organizations Act**
14 **(CROA), and California's Unfair Business Practices Law, Business and Professions**
15 **Code Section 17200.**

16
17
18 Paragraph 9. should be added to the Final order to read: **The Order Granting**
19 **Final Approval of Class Settlement and the judgment issued shall not be entered**
20 **until after the Court's ruling of plaintiff's motion for attorney's fees and costs.**
21 **The amount of attorney's fees and costs ordered [if any] shall be included in the**
22 **Order Granting Final Approval of Class Settlement.**

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25 Paragraph 10. should be added to the Final Order to read:

26
27 **Pending the outcome of defendant's appeal as to liability issues and any**
28 **award that may be entered regarding attorney's fees and costs, the parties shall**

1 **maintain their status quo. Plaintiff shall not execute on the judgment for damages**
2 **or on any order that might be issued by the Court against defendant for payment**
3 **of attorney's fees and costs.**
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7 Dated: November 10, 2008

PIETRO & ASSOCIATES

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10 _____
11 Gino P. Pietro
12 Attorney for Defendant, Peter L. Recchia
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